No. 97-1587

(2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

NANCY KIMBALL KRIPPENE, Individually, and as the Executrix of the Estate of URBAN M. KRIPPENE, Deceased,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA and CHATHAM COUNTY, GEORGIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONER

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The Petitioner files this Reply Brief addressed to contested new points raised in the Brief in Opposition, Priority Mailed First Class to Petitioner on April 23, 1998 and delivered Saturday afternoon, April 25, 1998.

1. The first contested point is the contention by the Respondents that Chatham County Police Officer Bryan Smith, who drove the speeding County Police vehicle on his way to work while not on a high-speed chase and collided with Petitioner's decedent Urban M. Krippene and caused his death, was not a named Defendant in the *Section 1983* Action.

The Respondents raise the issue of there not being a compelling reason for granting a Writ, by focusing on an automobile accident with Petitioner's decedent involving a Chatham County Police Officer driving to work not constituting a Constitutional deprivation under 42 *U.S.C.* §1983. Respondents argue that in this Case there is no departure by a lower Court calling for an exercise of this Court's supervisory power such as a character of the reasons this Court considers. The Respondents argue that there is "*no split*" in any of the Circuits regarding Municipal Liability in the case of an automobile accident between a citizen and a Police Officer not involving a high-speed pursuit or an emergency.

The thrust of this Opposition is the contention that there is a Municipal Liability difference between a high-speed

pursuit/emergency situation and circumstances involving Police Officers engaging in officially unrestrained, known indiscriminate high-speed use of Police vehicles.

The Respondents object to Plaintiff's Complaint having been filed only against Chatham County and focusing on Local Government Liability, as opposed to the Standard of Liability for Officers in the context of high-speed vehicular pursuits.

The Respondents dispute the applicability of *Lewis v. Sacramento County*, 98 F.3d 434 (9th Cir. 1996), now being considered by the Supreme Court on *Certiorari*, because *Note 5* in *Lewis, Id.* 439, referring to the Court's "*broad spectrum*" ranging throughout the various Circuits regarding official conduct that constitutes a *Section 1983* Due Process violation, does not apply to a local government in a "*simple automobile accident*" involving the officer's "*entitlement to qualified immunity*".

In the Case *sub judice*, it should be plainly obvious to all, that the County's continuing dereliction involving the deliberate disregarding of "*a known or obvious consequence of [their] action*" and the actions of Officer Smith did occur "*before*" the fatal occurrence here and that both the County's and Officer Smith's relevant derelictions also occurred both "*before*" and as well as *at the time* of the fatal collision. The required "*underlying constitutional deprivation*" supporting this claim against the County for Smith's actions and the deliberate actions of the

County permitting Smith's actions, which were an obvious consequence of his permissive, known improper use of a County vehicle, has been established by Petitioner. This deliberate failure on the part of the County under the policy or custom of the County, was "*a direct causal link between a municipal policy or custom an the alleged Constitutional deprivation*" of Mr. Krippene's rights. *Canton v. Harris*, 489 U.S. 378, 385, 103 L.Ed.2d 412, 424, 109 S.Ct. 1197 (1989); *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. _____, 137 L.Ed.2d 626, 117 S.Ct. 1382 (1997). There is abundant evidence of conduct in this Case that is outrageous and that "*shocks the conscience*".

The Respondents' attempt to exclude the County under the circumstances presented by the Petitioner, relies on a strained interpretation of *Lewis, supra*, that can be properly construed as involving any "*high-speed*" occurrence which takes place under color of State Law that would support a *Section 1983* claim because of such "*deliberate*" failures that caused a Constitutional violation and the "*moving force*" behind the injury alleged. The Petitioner has shown that the County action here "*was taken with the requisite degree of culpability and [has] demonstrate[d] a direct causal link between the [County] action and the deprivation of federal rights*". *Brown, Id.*, 137 L.Ed.2d 626, at 639. The "'*deliberate indifference' to the obvious consequences*" of Chatham County's Policymakers' choice in allowing its Police Officers to indiscriminately speed

in Police vehicles presented a "*high degree of predictability*" that would support an "*inference of causation*" in this Case — that Chatham County's "*indifference led directly to the very consequence that was so predictable.*" *Brown, Id.*, 137 L.Ed.2d 626, at 643.

2. The second contested point is the contention by the Respondents that the County did not condone a pattern of reckless disregard for public safety on the highways and streets by not requiring the issuance of traffic Citations to their Police Officers who exceeded the speed limit, when not responding to a Call, in violation of State Law.

It is plain from the Depositions taken (Petition Appendix G, H, I, J, K, L, M and N), that Chatham County specifically authorized their County Police Officers and Supervisors to use their own judgment in determining whether a speeding Citation should be issued to their Police violators, resulting in the County allowing its Police Officers to violate State Law controlling vehicular speed. The County's established custom and policy of leaving "*it up to the officer on the street whether to issue a ticket to a speeding officer*" (Respondents' Appendix A, St. Lawrence Depo, p.52-53) and leaving "*it entirely up to the supervisor whether to issue a citation*" (Respondents' Appendix B, Freeman Depo, p.43-44), and "*that if [Cpl. Owens] saw officers speeding, to let their supervisors know*" (Respondents' Appendix F, Owens Depo, p. 12, 15-16; Appendix B, Freeman Depo, p. 44) and the Deposition of Cpl. Leopold

(Petitioner's Appendix I, Leopold Depo, p. 15), clearly establishes the County officially sanctioning its Police Officers to violate the Law with impunity since it appears that no speeding Citations were ever issued to its County Officers who exceeded the speed limits while not on Call.

The Respondents contend that the characterization of any person below the level of Chief as a Policymaker, is disputed, notwithstanding former Chief St. Lawrence having testified that it was "*up to the officer on the street whether to issue a ticket to a speeding officer*" (*Id.* p.52-53), which clearly shows that the Chief of Police delegated this decision to other Police Officers in the Chatham County Police Department Chain-of-Command.

The Chief of the Chatham County Police Department established the policy of allowing Officers on the street and the Supervisors to make decisions as to whether speeding Citations should be issued to other offending Police Officers. This was not only the custom employed, but the established policy that left Officer Smith to speed unrestrained at-will. *Pembaur v. Cincinnati*, 675 U.S. 469, 483-484, 89 L.Ed.2d 452, 106 S.Ct. 1292 (1986); *Collins v. Harker Heights*, 503 U.S. 115, 122, 117 L.Ed.2d 261, 271, 112 S.Ct. 1061 (1992).

3. The third contested point is the contention by the Respondents that Counsel for Petitioner acknowledged during Oral Argument before the Court of Appeals that Smith's conduct did not constitute a

Constitutional deprivation.

The Respondents make this *extra judicium* utterance outside the Record presented to this Court, that is both taken out of context and misinterprets what Petitioner's Counsel said to the Court of Appeals.

Petitioner's Counsel commented that the suit was filed against the County, not former Police Officer Smith, for the *Section 1983* violations of the County in permitting the conduct of Smith which the Petitioner's Counsel had otherwise argued did also constitute a Constitutional deprivation of the rights of the late Mr. Krippene and that this deprivation was committed by both the County and Smith at the time of the vehicular collision resulting in Mr. Krippene's death, even though Petitioner had rightfully elected to sue only the County.

Nevertheless, the County, as shown, did independently, customarily and deliberately allow Smith to continue his habitual violation of both its other asserted policies and Georgia State Law, which custom became a policy in itself, that foreseeably culminated in the collision with Mr. Krippene's vehicle while Smith was permissively driving a Police vehicle to work in a manner that was under color of State Law. The County's failure to properly train and control Smith, which the County admitted as presenting a "*negligent retention problem*" (Freeman Depo, Petitioner's Appendix N) and its policy of not controlling its Police Officers' speeding

while not on Call, were failures that "*caused the constitutional violation*". *Canton*, 489 U.S. at 391, 103 L.Ed.2d at 428; *Collins v. Harker Heights*, 503 U.S. 115, 122, 117 L.Ed.2d 261, 271, 112 S.Ct. 1061 (1992)[1].

The contention that the collision "*could have happened if Smith had been driving his family car to work*", *begs the question*. Further, the causation, as presented by the Respondents at the end of their Statement Of The Case, concerning the liability for the collision itself, is not an issue now before this Court.

THEREFORE, for the reasons set forth in the Petition and this Reply, the Petition should be granted.

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[1]Respondents' *Footnote 1* points out that Petitioner incorrectly stated that *Collins* involves a high-speed police pursuit. Petitioner inadvertently attributed the high-speed pursuit in *Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986) cited at p.13 of the Petition for Writ of Certiorari immediately preceding the *Collins* citation, as the basis of the action in *Collins*.

Respectfully submitted:

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